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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,567	11/20/2000	Bassem M. Demian	176746-2	7505

7590 05/23/2003

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EXAMINER
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FUQUA, SHAWNTINA T

ART UNIT	PAPER NUMBER
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3742

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DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/716,567

Applicant(s)

DEMIAN, BASSEM M.

Examiner

Shawntina T. Fuqua

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-- Th MAILING DATE f this communication appears on th cover sh et with the correspond nc address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on amendment received 02/26/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 February 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 12-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hurtado (US6341237) in view of Axelgaard et al (US4326534).

Hurtado discloses a method of correcting an imbalance condition in a limb wherein the limb is controlled by first and second counteracting muscles wherein the first muscle is stronger than the second muscle and comprising the step of applying an electrical signal to the second muscle to strengthen the second muscle to counter balance the strength of the first muscle to correct the imbalance between the two muscles and cause the limb to assume the normal position (column 4, lines 29-47), and a strap (20) wherein at least one electrode is attached to the strap with the electrode abutting the muscle (column 9, lines 14-21, 24-26; Figures 1-2) and then applying an electrical pulse signal to the electrode (column 9, lines 59-67). Hurtado does not disclose a method of correcting a bunion condition in a foot by applying the electrical signal to the abductor hallucis muscle, applying repetitive cycles of electrical pulses, generating pulses at a rate of 2Hz to 150Hz and a pulse width of about 60 to 250 microseconds, increasing the pulse width, optimizing the signal to maximize correction by adjusting the signal parameters until an optimum signal is generated, applying the signal in the range of 15-30 minutes, tightening and

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relaxing the muscle in the repetitive periods. While Hurtado does not explicitly disclose a method of correcting a bunion condition by applying an electrical signal to the abductor hallucis muscle, it would have been obvious to one of ordinary skill to have applied the method and strap to a limb such as a foot. Axelgaard et al discloses applying repetitive cycles of electrical pulses (abstract, column 7, lines 56-67), generating pulses at a rate of 2Hz to 150Hz (column 8, lines 8-10) and a pulse width of about 60 to 250 microseconds (column 10, lines 63-68), increasing the pulse width (column 7, lines 64-66), optimizing the signal to maximize correction by adjusting the signal parameters until an optimum signal is generated (column 7, line 56-column 8, line 2), applying the signal in the range of 15-30 minutes (column 14, line 66), tightening and relaxing the muscle in the repetitive periods (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the repetitive electrical pulses with varying pulse rate and width of Axelgaard in the method of Hurtado because, repetitive electrical pulses with varying pulse rate and width minimizes the undesirable effect of muscle fatigue during treatment.

### *Response to Arguments*

3. Applicant's arguments filed 2/26/03 have been fully considered but they are not persuasive. Applicant argues that neither Hurtado or Axelgaard et al do not disclose a method for correcting a bunion condition in a foot. Examiner agrees with the applicant on that point. However, as stated in the action above, while Hurtado does not explicitly disclose a method of correcting a bunion condition by applying an electrical signal to the abductor hallucis muscle, it

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would have been obvious to one of ordinary skill to have applied the method and strap to a limb such as a foot. Therefore, the rejection is valid.

### *Conclusion*

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawntina T. Fuqua whose telephone number is (703) 305-2581. The examiner can normally be reached on Monday-Friday 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on (703) 308-1327. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

stf  
May 17, 2003

  
Teresa Walberg  
Supervisory Patent Examiner  
Group 3700